

3.1

§ 2-5B7. Espionage

(a) OFFENSE.—A person is guilty of espionage if:

(1) with knowledge that the information is to be used to the injury of the United States or to the advantage of a foreign power, he gathers, obtains, or reveals national defense information for or to a foreign power or an agent of such power; or

(2) with intent that it be communicated to the enemy and in time of war, he elicits, collects, records, publishes, or otherwise communicates national defense information.

(b) ATTEMPT.—Without otherwise limiting the applicability of section 1-2A4 (criminal attempt), any of the following is sufficient to constitute a substantial step under such section toward commission of espionage under subsection (a)(1): obtaining, collecting, or

eliciting national defense information, or entering a restricted area to obtain such information.

(c) GRADING.—The offense is a Class A felony if committed in time of war or if the information directly concerns military missiles, space vessels, satellites, nuclear weaponry, early warning systems or other means of defense or retaliation against attack by a foreign power, war plans, or defense strategy. Otherwise it is a Class B felony.

§ 2-5B8. Misuse of National Defense Information

(a) OFFENSE.—A person is guilty of an offense if in a manner harmful to the safety of the United States he:

(1) knowingly reveals national defense information to a person who is not authorized to receive it;

(2) is a public servant and with criminal negligence violates a known duty as to custody, care, or disposition of national defense information, or as to reporting an unauthorized removal, delivery, loss, destruction, or compromise of such information;

(3) knowingly having unauthorized possession of a document or thing containing national defense information, fails to deliver it on demand to a Federal public servant entitled to receive it;

(4) knowingly communicates, uses, or otherwise makes available to an unauthorized person communications information;

(5) knowingly uses communications information; or

(6) knowingly communicates national defense information to an agent or representative of a foreign power or to an officer or member of an organization which is, in fact, defined in section 782(5), title 50, United States Code.

(b) GRADING.—The offense is a Class C felony if it is committed in time of war. Otherwise it is a Class D felony.

The key term "national defense information" is explicitly defined:

"[N]ational defense information" means information regarding:

(i) the military capability of the United States or of a nation at war with a nation with which the United States is at war;

(ii) military or defense planning or operations of the United States;

(iii) military communications, research, or development of the United States;

(iv) restricted data as defined in section 2014, title 42, United States Code;

(v) communications information;

(vi) in time of war, any other information which if revealed could be harmful to national defense and which might be useful to the enemy;

(vii) defense intelligence of the United States, including information relating to intelligence operations, activities, plans, estimates, analyses, sources, and methods.

S. 1700

(a) OFFENSE.—A person is guilty of an offense, if, with intent that information relating to the national defense be used, or with knowledge that it may be used, to the prejudice of the safety or interest of the United States, or to the advantage of a foreign power, he knowingly:

- (1) communicates such information to a foreign power;
- (2) obtains or collects such information for a foreign power or with knowledge that it may be communicated to a foreign power; or
- (3) enters a restricted area with intent to obtain or collect such information for a foreign power or with knowledge that it may be communicated to a foreign power.

Insofar as "communicate" means "to make information available by any means, to a person or to the general public," the statute makes it an offense to collect national defense information knowing that it may be published. "National defense information" is defined slightly more narrowly than in S. 1, but does include:

- [I]nformation, regardless of its origin, relating to:
- (1) the military capability of the United States. . . .
* * * *
 - (5) military weaponry, weapons development, or weapons research of the United States. . . .
* * * *
 - (9) the conduct of foreign relations affecting the national defense. . . .